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OGC 73-1281

11 July 1973

MEMORANDUM FOR THE RECORD

SUBJECT: July Meeting of ICRC

1. The Committee met today in the Roosevelt Room of the White House.

2. The June minutes were approved. In the course of considering the minutes, it was agreed that the Department of Justice would prepare a memorandum concerning the classification of information from private sources. This came up in paragraph 6E. of the June minutes.

3. The Committee addressed itself to Item 2, the matter of ICRC procedures. After some discussion, it was agreed that the Committee as a matter of policy would review all declassification denials involving documents of information at least 30 years old, but the language of the ICRC procedures would grant the Committee discretion in that regard. The Department of Justice is to prepare appropriate language which will be circulated for comment promptly and the procedures will be published in the Federal Register. This item also involved the longstanding matter of the CIA view that the Committee does not or should not have jurisdiction with respect to appeals involving intelligence sources and methods. Mr. Dixon handed out an undated memorandum from him to the Attorney General, copy attached, which he advised has the agreement of the Attorney General. It will be seen that Justice concludes that, in the absence of an amendment to the Executive Order, the Committee lacks the right to decline to exercise jurisdiction with regard to appeals from denials concerning intelligence sources and methods. The Department

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of Justice also takes the view that as a matter of policy the Committee should not be denied such jurisdiction. [REDACTED] stated that he disagreed with some of the legal arguments. In particular, he disputed the contention that because the preface to section 102(d) of the National Security Act (50 U.S.C. 403(d)) imposes various duties on the Agency "under the direction of the National Security Council" and because ICRC is a mechanism to assist the National Security Council, the proviso of section 102(d) charging the Director with protecting sources and methods does not exempt such questions from the Committee. He also advised that our request in this area reflected his discussions with the two recent Directors. He would discuss the matter now with the new Director designate, Mr. Colby, to determine whether Mr. Colby wants to seek an amendment of the Executive Order. There was tacit acceptance that this was an appropriate course of action.

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4. Mr. Rhoads introduced Ambassador Blake from the Department of State, who is the Chairman of the Ad Hoc Group Committee which was created by Mr. Rhoads' memorandum of 30 May. Ambassador Blake reported that the Committee is to meet tomorrow and he hopes to have a draft report for circulation by the end of the month and he expects to meet the Committee deadline (15 September).

5. Item 3, the Clay Blair request for declassification of documents involving the World War II breaking of the Japanese Code, brought on considerable discussion. It was generally agreed that the Executive Department as a whole has not distinguished itself. Mr. Liebling of Department of Defense distributed a copy of a memorandum which DOD addressed to Mr. Blair on 28 June (copy attached). The memorandum advises that various documents requested by Blair have now been declassified. Some further work is in process and some documents "cannot be declassified by the Department of the Navy at this time." This latter language, it developed, meant that Navy believes USIB action is required in this area. Mr. Liebling is to determine whether the Navy is addressing this to USIB and is to get back to Mr. O'Neill (for Dr. Rhoads) on the point. I propose to follow up with Liebling also and it may be that we should address the matter to USIB without awaiting action by the Navy.

6. Mr. Day of the National Security Council advised that Dr. Kissinger has decreed that the documents involved in the Stueck declassification appeal (which involve Korea) should not be declassified at this time. They will be declassified in the near future, however, and indeed the declassification will cover more documents than those involved in the Stueck appeal.

7. Dr. Rhoads distributed a memorandum of 10 July, copy attached, concerning inspection programs and requested department comments by the latter part of next week.

8. Mr. O'Neill reported as Acting Chairman of the Subcommittee concerning foreign derived information. I have since advised him that we have no objection to the several questions which the Subcommittee had drafted for submission to Department of Justice.

9. The August meeting is to be held on 8 August rather than on 1 August.

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Associate General Counsel

Attachments

cc: 

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